IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 8TH JUNE 2007 / 18TH JYAISHTA 1929

WA.No. 74 of 2007()

AGAINST THE JUDGMENT IN O.P. 12720 OF 1998 DATED 16.06.2006

APPELLANT/PETITIONER:

KALPETTA ESTATES LIMITED,
BEACH ROAD, ALLEPPEY, (NOW AMALGAMATED WITH THE
RAJAGIRI RUBBER AND PRODUCE CO.LTD.,
BEANCH ROAD, ALLEPPEY BY ORDER OF HIGH COURT IN
C.P.NO.9 OF 2005 IN M.C.A. NO.97 OF 1998 OF 2004.

BY SR. ADVOCATE SHRI C.M. DEVAN.
BY ADV. SRI.A.M.SHAFFIQUE

RESPONDENTS/RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY
CHIEF SECRETARY TO GOVERNMENT,
SECRETARIAT, TRIVANDRUM.

2. THE CUSTODIAN OF VESTED FORESTS,
TRIVANDRUM.

3. THE FOREST TRIBUNAL, KOZHIKODE.

BY SPL. GOVERNMENT PLEADER FOR FOREST SHRI RENJIT THAMPAN

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 08/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

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WA. No. 74 OF 2007

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Dated this the 8th June, 2007

J U D G M E N T

Sankaran,J:

Appellant herein filed the Original Petition No.12720 of 1998, challenging Ext. P4 order dated 08.01.1998 passed by the Forest Tribunal, Kozhikode, by which the Forest Tribunal dismissed the application to set aside the order dated 24.11.1986 and the application to condone the delay in filing the application to set aside the order. The learned single Judge dismissed the Original Petition.

2. O.A.NO. 94 of 1975 was filed by the petitioner before the Forest Tribunal, Kozhikode under section 8 of the Kerala Private Forests (Vesting & Assignment)Act, 1971. The Forest Tribunal dismissed the application by Ext. P1 order dated 29th August, 1978. The petitioner challenged that order in M.F.A. 543 of 1978 before this Court. As per the judgment dated 10th October, 1984, this Court set aside the order of the Forest Tribunal to the extent mentioned in the judgment and remanded the case to the Forest Tribunal for fresh disposal.

3. After the remand, a Commissioner was appointed, who inspected the disputed land and submitted a report. It was noted in the report that the extent of

land in certain blocks is larger than 62 acres, as claimed by the petitioner. The petitioner Company requested the Forest Tribunal to permit them to adduce evidence in respect of 71.78 acres of land in those blocks instead of the extent of 62 acres claimed by them originally. The Forest Tribunal disallowed that prayer, which was challenged in O.P. No. 7482 of 1985 by the petitioner before this Court. A stay order was granted in O.P. 7482 of 1985 and it continued till 20.08.1987, when this Court disposed of the Original Petition No. 7482 of 1985, allowing the prayer made by the petitioner and directing the Forest Tribunal to consider the case of the petitioner not only in respect of 62 acres but also in respect of 71.78 acres.

4. When the Original Petition No. 7482 of 1985 was pending before this Court, though the stay order was produced before the Forest Tribunal, the Forest Tribunal dismissed O.A.No. 94 of 1975 for default on 24.11.1986. After Ext. P3 order in O.P.7482 of 1985 was passed, the Forest Tribunal did not suo motu restore the O.A. and did not post the case for further steps and evidence. The petitioner also did not bring to the notice of the Forest Tribunal about the disposal of Original Petition No. 7482 of 1985 and pray for adducing further evidence. The matter remained as such for several years. In 1997, the petitioner filed I.A.Nos. 126 and 127 of

1997 for setting aside the order dated 24.11.1986 and to condone the delay in filing that application. Those applications were dismissed by Ext. P4 order by the Forest Tribunal, which was under challenge in the Original Petition No. 12720 of 1998.

5. The reason for the dismissal of the applications by the Forest Tribunal was that Section 5 of the Limitation Act would not apply to the Forest Tribunal in condoning the delay in filing the application and that there is no ground to condone the inordinate delay in filing the application. For the purpose of the disposal of this Writ Appeal, we do not think it is necessary to consider whether Section 5 of the Limitation Act is applicable to the Forest Tribunal. We are of the view that this Writ Appeal can be disposed of, without going into the question whether Section 5 of the Limitation Act is applicable or not.

6. The fact remains that O.A. was dismissed for default on 24.11.1986. At that time, the stay order granted by this Court was in force. The operation of the stay order came to an end only on 20.08.1987. The Forest Tribunal did not post the case for further steps and evidence after 20.08.1987. Dismissal of O.A. on 24.11.1986, without noticing the stay granted by this court certainly would constitute an irregularity in the

proceedings, which the Forest Tribunal ought to have corrected immediately when it came to the notice of the Forest Tribunal. Having not done so, when the petitioner brought it to the notice of the Forest Tribunal, the Forest Tribunal ought to have restored the proceedings and decided the case on the merits, rather than accusing the petitioner for not moving the application, at least after 20.08.1987. It is relevant to note here that dismissal of the O.A. on 24.11.1986 was not brought to the notice of the Court when O.P. No. 7482 of 1985 was heard and disposed of on 20.08.1987. If the O.A. is not restored to file, the resultant position would be that the judgment in O.P.No.7482 of 1985 would become otiose. Had it been brought to the notice of this Court in O.P.No.7482 of 1985 that the Forest Tribunal had dismissed the O.A. on 24.11.1986 for default when the stay order was in force, certainly this Court would have directed the Tribunal to restore the O.A.

7. We are of the view that for the mistake committed by a court or Tribunal, a party cannot be made to suffer. The principle is that an act of a court shall prejudice none. In that view of the matter, the impugned order passed by the Tribunal is liable to be set aside . We allow the Writ Appeal, set aside the judgment of the learned single Judge and also set aside Ext. P4

order dated 08.01.1998. The Forest Tribunal shall restore O.A. 94 of 1975 to file and dispose of the same on the merits, as expeditiously as possible.

Writ Appeal is allowed as above.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

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